(19,006.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 355.

WESLEY E. TRAVIS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims of the United States.

WESLEY E. TRAVIS, Claimant,
vs.
THE UNITED STATES. } No. 22814.

I.—*Petition. Filed March* 3, 1902.

To the honorable the justices of the Court of Claims:

The above-named claimant, Wesley E. Travis, respectfully represents—

1. That he is a citizen of the United States, now residing in Salt Lake City, State of Utah, and brings this suit in his own right in respect of the matters hereinafter set forth.

2. That heretofore, to wit, on the 15th day of September, 1896, the then Postmaster General of the United States, acting therein for and on behalf of the United States, advertised for proposals for transporting the mails in various cities of the United States, and, among others, on route No. 404,011, being the covered screen wagon mail station service, at Boston, Massachusetts, for the term from July 1, 1897, to June 30, 1901.

2 3. That, pursuant to said advertisement and the several matters therein set forth and contained, claimant made and filed with the Post-Office Department a proposal for the performance of said service for the period named in said advertisement, to wit, from July 1, 1897, to June 30, 1901, inclusive, naming as the compensation to be received by him therefor the sum of three thousand seven hundred and eighty dollars ($3,780) per annum; that his said bid was thereafter duly accepted by said department, and award of said contract made to claimant under date December 21, 1896; and that thereupon, to wit, in January, 1897, claimant entered into a contract, in writing, with the United States, with surety, for the performance of said service during the period aforesaid, and which said contract was duly approved and accepted by said department.

Claimant shows that he is unable at this time to attach hereto as a part of this petition copy of said contract, inasmuch as all copies thereof were and are retained by the said department.

4. Claimant further shows that the contract having been so entered into with him, as aforesaid, he made preparation for the due and proper performance thereof, and in that behalf expended large sums of money, to wit, the sum of five hundred dollars ($500).

5. He further shows that, notwithstanding the fact that he was at all times ready, willing, and able to perform the service so embraced in said contract according to the terms thereof, and so repeatedly tendered himself to the defendant, yet nevertheless, against the protest and objection of claimant, the defendant thereafter, and without any just cause or reason therefor, refused to permit claimant

to perform the service so embraced in his said contract; and in further violation of the rights of claimant, and in express violation and disregard of the said contract so entered into and existing, as aforesaid, the defendant entered into a contract with another, covering said route No. 404,011, and likewise covering the same period aforesaid.

6. Claimant avers that he in no way acquiesced in or assented to the matters last hereinabove referred to, and, on the contrary thereof, protested and objected thereto, but without avail.

7. Claimant further shows that the difference between the cost to claimant of performing the service under his said contract and the amount which by the terms thereof he was entitled to receive therefor, covering the said contract period of four years, was the sum of, to wit, five thousand dollars ($5,000); of all of which gains and profits claimant was wrongfully deprived by the action of the defendant, as hereinbefore set forth.

8. Claimant avers that he is entitled to the moneys herein named, and that said amount is justly due and owing to him from the United States after allowing all just credits and set-offs; that no assignment or transfer of the claims hereinbefore set forth, or any part thereof, or any interest therein, has been made by him to any one whomsoever or by any one in his behalf, and that he has, at all times, borne true allegiance to the United States.

Wherefore, the premises considered, claimant demands judgment against the United States in the sum of five thousand five hundred dollars ($5,500).

WESLEY E. TRAVIS, *Claimant.*

A. A. HOEHLING, JR.,
Attorney for Claimant.

Post-office address of claimant, Wesley E. Travis, Salt Lake City, Utah.

Post-office address of attorney for claimant, A. A. Hoehling, Jr., 1416 F street N. W., Washington, D. C.

SALT LAKE CITY, } ss:
State of Utah, }

Before me, the undersigned, personally appeared Wesley E. Travis, who, being by me first duly sworn, on oath says that the several matters and things set forth and contained in the foregoing petition by him subscribed are true, as he verily believes.

WESLEY E. TRAVIS.

Subscribed and sworn to before me this 25th day of February, A. D. 1902.

BENNER X. SMITH,
Notary Public.

[SEAL.]

II.—*Traverse.*

In the Court of Claims of the United States, December Term, A. D. 1902.

WESLEY E. TRAVIS
vs.
THE UNITED STATES. } No. 22814.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

Filed March 17, 1903.

5 III.—*Findings of Fact and Conclusion of Law and Opinion of the Court and Dissenting Opinion in the Case of Slaven vs. The United States.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Claimant is a citizen of the United States, a resident of Salt Lake City, Utah; that he has at all times borne true allegiance to the United States; that he is the sole owner of the claim embraced in this suit, and that no transfer or assignment of said claim, in whole or in part, or of any interest therein, has ever been made by him.

II.

On September 15, 1896, the then Postmaster-General of the United States advertised for proposals for transporting the mails in various cities of the United States, and, among others, on route No. 404011, being the covered screen wagon mail-station service, at Boston, Mass., for the term from July 1, 1897, to June 30, 1901.

III.

Pursuant to said advertisement and the several matters therein set forth and contained, claimant made and filed with the Post-Office Department a proposal for the performance of said service for the

period named in said advertisement, to wit, from July 1, 1897, to June 30, 1901, inclusive, naming as the compensation to be received by him therefore the sum of $3,780 per annum.

A true copy of said proposal is as follows:

Proposal.

Covered screen wagon mail messenger, transfer, and mail station service, city of Boston, Mass., route No. 404011.

The undersigned, Wesley E. Travis, whose post-office address is New York, county of New York, State of New York, proposes
6 to carry the mails of the United States from July 1, 1897, to June 30, 1901, on above-numbered route, being the covered screen wagon mail messenger transfer, and mail station service in the city of Boston, State of Mass., under the advertisement of the Postmaster-General, dated September 15, 1896, and subject to all the requirements and conditions contained therein for the sum of thirty-seven hundred eighty dollars per annum; and if this proposal is accepted he will enter into contract, with sureties to be approved by the Postmaster-General, within thirty days after the date of acceptance.

This proposal is made after due inquiry into and with full knowledge of all particulars in reference to the service; and, also, after careful examination of the conditions attached to said advertisement and with intent to be governed thereby.

Dated November 12th, 1896.

WESLEY E. TRAVIS, *Bidder.*

Examined by Coon.

IV.

Said proposal was thereafter duly accepted by said department, and award of said contract was duly made to claimant on December 21, 1896, and that thereupon contract, in writing, bearing the date last aforesaid, was entered into between the defendant and claimant, with sureties, for the performance of said service during the period aforesaid, and which said contract was duly approved and accepted by said department, and is as follows:

Covered Screen Wagon Mail Station Service in the City of Boston, Mass.

Route No. 404011. Annual rate of pay, $3,780.00. Contractor's address: New York, New York Co., State of N. Y.

This article of contract, made the 21st day of December, eighteen hundred and ninety-six, between the United States of America (acting in this behalf by the Postmaster-General) and Wesley E. Travis, contractor, and Dan Morris, of Cascade, Montana, and Matthew Cullen, of Salt Lake City, Utah, as his sureties:

Witnesseth, that whereas Wesley E. Travis has been accepted as contractor for transporting the mails on route No. 404011, being the covered screen wagon mail station service in the city of Boston, Mass., under an advertisement issued by the Postmaster-General on the 15th day of September, 1896, for such service, which advertisement is herewith referred to and made by such reference a part of this contract, and for performing all new or additional service of said kind which may at any time during the term of this contract be required in said city, at three thousand seven hundred and eighty dollars per year, for and during the term beginning the first day of July, 1897, and ending June 30, 1901.

Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

First. To carry said mail, using therefor wagons of the kind hereinafter described in sufficient number to transport the whole of said mail, whatever may be its size, weight, or increase during the
7 term of this contract, and within the time fixed in the pamphlet advertisement of the Postmaster-General dated September 15th, 1896; to carry said mails in a safe and secure manner, in substantial one or two horse wagons of sufficient capacity for the entire mail; the wagons to be employed to be first class, suitable for the proper performance of the service, affording complete protection to the mails from depredation, inclement weather, or other injury, and subject in all respects to the approval of the Postmaster-General; the running gear and body of the wagons to be of any approved design; the wagons to be provided with strong springs; the top to be waterproof; the front, sides, and rear entirely covered by strong wire screens, with adjustable waterproof curtains, and the rear to open by wire-screen doors, which are to be securely fastened by first-class locks; the wagons to be kept thoroughly painted, cleaned, and in good condition, the Postmaster-General reserving the right to vary at any time, when, in his judgment, the service may require it, the plan or form of wagons to be used in the service.

Second. To take the mail from and deliver it into the post-offices and mail stations at such points and at such hours, under the directions of the postmaster at Boston, Mass., approved by the Postmaster-General, as will secure dispatches and connections and facilitate distribution, and at the contractor's expense for tolls and ferriage.

Third. To furnish the number of said wagons that, in the opinion of the postmaster at Boston, Mass., approved by the Postmaster-General, will be sufficient for the prompt and proper performance of the service, including extra wagons to take the place of those that may be temporarily unserviceable or withdrawn from service for repairs.

Fourth. To be accountable and answerable in damages to the United States, or any person aggrieved, for the faithful performance by the said contractor of all the duties and obligations herein as-

sumed, or which are now or may hereafter be imposed upon him by law in this behalf; and, further, to be so answerable and accountable in damages for the careful and faithful conduct of the person or persons who may be employed by said contractor and to whom the said contractor shall commit the care and transportation of the mails, and for the faithful performance of the duties which are or may be by law imposed upon such person or persons in the care and transportation of said mails; and, further, that said contractor shall not commit the care and transportation of the mail to any person under sixteen years of age, nor to any person not of good moral character, or who has not taken the oath prescribed by law, or who can not read and write the English language.

Fifth. To discharge any driver, or other person employed in performing mail service, whenever required by the Postmaster-General so to do; not to transmit by themselves, or any of them, or any of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail.

Sixth. To account for and pay over any money belonging to the United States which may come into the possession of the contractor, his sureties, or employés.

Seventh. That foreign mails in transit across the territory of the United States shall, within the meaning of this contract, be deemed and taken to be mails of the United States.

Eighth. To carry post-office blanks, mail locks and mail bags, and all other postal supplies.

8 *Ninth.* To convey, whenever requested so to do, one railway post-office clerk, a substitute, or a messenger, on the driver's seat of each wagon.

Tenth. To perform all new or additional or changed covered screen wagon mail station service that the Postmaster-General may order at the city of Boston, Mass., during the contract term, without additional compensation, whether caused by change of location of post-office, stations, landing, or the establishment of others than those existing at the date thereof, or rendered necessary, in the judgment of the Postmaster-General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster-General may require, as a part of such new or additional service.

For which service, when properly performed, and the evidence thereof shall have been filed in the office of the Second Assistant Postmaster-General, the said Wesley E. Travis, contractor, is to be paid by the United States the sum of three thousand seven hundred and eighty dollars a year, to wit: Quarterly, in the months of November, February, May, and August, or as soon thereafter as accounts can be adjusted and paid, said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended and withheld in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his
ireties that the Postmaster-General may change the schedule
nd termini of the route, vary the routes, increase, decrease, or ex-
nd the service thereon, without change of pay; and that the Post-
naster-General may discontinue the entire service whenever the
ublic interest, in his judgment, shall require such discontinuance;
ut for a total discontinuance of service the contractor shall be al-
owed one month's extra pay as full indemnity.

And it is further stipulated and agreed that for a failure to de-
ver not beyond the control of the contractor, or for any delay or in-
erference with the prompt delivery of the mail at the post-office or
ail stations, or for carrying the mail in a manner different or
nferior to that hereinbefore specified; for suffering the mail to be
et, injured, lost, or destroyed; or for any other delinquency or
mission of duty under this contract; for all or any of which the
ontractor shall forfeit, and there may be withheld from his pay,
uch sum as the Postmaster-General may impose as fines or deduc-
ons, according to the nature and frequency of the failure or delin-
uency.

And it is further stipulated and agreed that the Postmaster-Gen
ral may annul this contract for repeated failures for violating the
ostal laws; for disobeying the instructions of the Post-Office De-
artment; for refusing to discharge a carrier or any other person
mployed in the performance of service, when required by the de-
artment; for transmitting commercial intelligence or matter that
ould go by mail, contrary to the stipulations herein; for trans-
orting persons so engaged as aforesaid; whenever the contractor
hall become a postmaster, assistant postmaster, or member of Con-
ress; and whenever, in the opinion of the Postmaster-General, the
ervice can not be safely performed, the revenues collected, or the
aws maintained.

And it is further stipulated and agreed that such annulment shall
ot impair the right of the United States to claim damages from
aid contractor and his sureties under this contract; but such dam-
ages may, for the purpose of set-off or counter claim in the
settlement of any claim of said contractor or his sureties
against the United States, whether arising under this con-
act or otherwise, be assessed and liquidated by the auditor of the
easury of the Post-Office Department.

And it is hereby further stipulated and agreed by the said con-
actor and his sureties that this contract may, in the discretion of
e Postmaster-General, be continued in force beyond its express
rms for a period not exceeding six months, until a new contract
ith the same or another contractor shall be made by the Postmas-
r-General.

And it is further stipulated that no member of, or delegate to, Con-
ress shall be admitted to any share or part of this contract, or to
ny benefit to arise therefrom.

And this contract is further to be subject to all the conditions

imposed by law and the several acts of Congress relating to post-offices and post-roads.

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has caused the same to be attested by the signature of the Second Assistant Postmaster-General, in accordance with the act of Congress approved March 3, 1877 (sec. 3, 19 Stats., p. 335), and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

V.

Thereupon claimant made the necessary preliminary arrangements preparatory to the performance of the said service, and in that behalf expended the sum of $500, and claimant was able, ready, and willing to perform the service under the contract aforesaid, and so repeatedly tendered himself to defendant, but was by the defendant prevented from the performance thereof, as hereinafter set forth.

VI.

The service under said contract covered 28,886 miles per annum, but before the date upon which, under the said contract, claimant was to commence the performance of said service the defendant decreased the service so that it embraced but 23,088 miles per annum, being a decrease merely in the quantity and volume of service required to be performed of 5,798 miles per annum, or a decrease of 20 per cent. from the annual mileage embraced in and called for by the said advertisement.

VII.

On April 27, 1897, defendant issued an order in terms directing the discontinuance of service under claimant's said contract.

A true copy of said order is as follows:

TUESDAY, *April* 27, 1897.

No. of order, 7264.

Name of service, screen wagons. W. E. Travis, $3,780, 404011, Mass., Boston, Suffolk Co.

Order. Discontinue service, to take effect July 1, 1897, and allow contractor one month's extra pay.

(Signed) PERRY S. HEATH,
1*st Asst., Acting Postmaster-General.*

10 And thereupon defendant entered into a contract with one L. C. Slavens, at the rate of $2,475 per annum, covering the same contract period for the service not changed to street car service.

VIII.

Said order to discontinue said service under claimant's contract aforesaid was not made on account of any neglect or default on the

part of claimant in the performance thereof, under the authority given to the Postmaster-General by the contract.

IX.

The difference between the amount it would have cost claimant to perform the service under his said contract during the contract term and the amount claimant would have received under said contract had the service not been discontinued, is the sum of $5,500.

Conclusions of Law.

Upon the foregoing facts the court decides, as a conclusion of law, that the claimant is not entitled to recover, and the petition should be dismissed.

WRIGHT, J., delivered the opinion of the court.

The principles involved in this case are the same, in part, which are concerned in the decision of the case of *Luther Clay Slavens v. The United States*, in which we have, in an opinion, given our reasons for the decision of that case. The reasoning there applies as well to the facts in this case, to which we refer without repetition.

The petition in this case should be dismissed, and it is so ordered.

The opinion of the court and dissenting opinion in the case of Slavens *v.* The United States is as follows:

WRIGHT, J., delivered the opinion of the court.

As may be discovered by reference to the findings of fact, the claimant herein was given three separate contracts for the transportation of mails in covered regulation mail wagons, one in Boston, another in Brooklyn, and still another in Omaha.

There are items for compensation in the cases of all the contracts for service, claimed to have been rendered at defendant's request outside the terms of the contracts, as it has been alleged, and much argument has been urged upon our attention in support and refutation of the respective contentions of the parties in this regard. In addition to these items of so-called extras, the claimant insists upon compensation for carrying the mails between Back Bay and Brookline post-offices, the latter being outside the city of Boston; but as this service was performed without the knowledge or request of any one having defendant's authority, this item, it is plain, cannot be allowed, and it will be dismissed from the case without further notice. (*Whitsell v. United States*, 34 C. Cls., R. 5.)

The chief claim growing out of the Boston and Brooklyn contracts is for a discontinuance by the Postmaster-General of all the service described in, and which was being performed under, those contracts, resulting, as has been urged by claimant, in a breach of the
11 contracts by the defendants, and consequent damage to him.

Both the right of the claimant to compensation for alleged extra services, and to damages for the termination of the services of the claimant, as was done, may be disposed of by correct interpretations of the contracts themselves.

In every essential particular, as relates to the points in question the contracts are alike, and in them claimant agreed to perform all new, or additional, or changed covered regulation wagon, mail, messenger, transfer, and mail-station service that the Postmaster-General might order during the contract term, without additional compensation, whether caused by change of location of post-office, stations, landing, or the establishment of others than those existing at the date of the contract, or rendered necessary, in the judgment of the Postmaster-General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster-General might require as a part of such new or additional service; that the Postmaster-General might change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster-General might discontinue the entire service whenever the public interest, in his judgment, should require such discontinuance, but for a total discontinuance of service claimant should be allowed one month's extra pay as full indemnity.

In support of the right to recover for the items of extra service, as he has described them, claimant has produced argument to prove that such services were extra services, as distinguished from new, or additional, or changed service, described in the contracts, for which no additional compensation should be given. The service so described was such as might be rendered necessary for any cause, in the judgment of the Postmaster-General. It must, of course, be connected with, or an incident to, the covered wagon mail, messenger, transfer, and mail-station service, for such only is the subject-matter of the contracts. It is easily seen that the extra service claimed for readily falls within the class or description of service specified in the contracts, or in part of, or incident to such service, rendered necessary for some sufficient cause. The discretion or judgment of the Postmaster-General, given by the contract, to determine the necessity of such service, ought not to be questioned, unless to prevent unwarranted or unjust interruptions of the contract rights vested in the claimant. It will not be presumed that officer required the performance of services not demanded by the exigencies of the business. Nothing appearing to the contrary, it will be assumed that the service required was necessary to the proper administration of the powers conferred by law upon the head of the department, which was clearly reserved by the stipulations contained in the contracts. The distinction endeavored to be pointed out between extra services and new and additional services is not seen. Extra or additional services are synonymous. There can be no difference in the meaning of the words, and whether called by the one or the other name the services equally fall within the description given to them by the contracts.

It is also insisted that the change of part of the service from covered regulation wagon to street-railway service was unwarranted by the contract. We are unable to give effect to the terms of the
12 contract giving authority to vary the routes, increase or decrease or extend the service thereon, without supporting the

change to street-railway service, the only effect of which was to decrease the service undertaken by claimant, and which was clearly authorized by the contracts. The cause or reason why such change, or decrease of service, might be made was not stated in the contracts, but left to the discretion of the Postmaster-General. It is true the contract provided that such decrease was to be without change of pay, and if this was the only provision of the contract in this regard, there would be much force in claimant's contention, but all the provisions of the contracts must be considered and given the effect intended by the parties when they were entered into.

After the service had been decreased, as stated, the Postmaster-General submitted to claimant a proposition, or suggestion, that he voluntarily relinquish part of the contract price for the continued performance of the services remaining after the change of a part thereof to the street railways, but claimant declined, in which, no doubt, he was clearly within his rights. In other words, he was under no obligation, under the contracts, to continue at a reduced price. So, therefore, the proposition and its rejection had no effect whatever upon the rights of either party, as defined by the contracts, and such were left to be determined by the provisions thereof, according to the terms and stipulations contained therein. The contracts gave to the Postmaster-General authority to discontinue the entire service whenever the public interest, in his judgment, should require such discontinuance, the claimant in such case, to be allowed one month's extra pay, as full indemnity, and this he did in the Boston and Brooklyn contracts.

Against this action of that officer it is argued that he discontinued the service because claimant declined to continue at a reduced rate, but we have not found the action of the officer was so influenced. We must presume, nothing appearing to the contrary—and it does not—such action was influenced solely because, in his judgment, the public interest required the discontinuance of claimant's services under the contracts in question. We can see, also, there was good reason for such conclusion. The service had been rightfully decreased, under the stipulations of the contracts, until the services remaining to be performed were not reasonably worth the original contract rate, and to have continued its payment would have been contrary to public interests, and while claimant was under no obligation to continue in the service at a reduced rate, the head of the department was obligated, as well by the duties of his high office as the provisions of the contract, to subserve the public interests in taking care that no unreasonable compensation was paid for the services actually performed.

It is insisted, however, that by the contracts was meant the discontinuance of the service entirely—that is, an abandonment of all mail service in the cities in question. The mere statement of this position, we think, is its own demolition. It is unreasonable to believe that it was in the mind of anybody, when the contracts were made, that all mail service in any of the cities named would ever be abandoned. Such clearly was not the intention of the parties, in the use of the

language employed. That which was intended, however, and by the words of the contracts accomplished, was that the per-
13 formance of the entire service by the claimant might be discontinued by the Postmaster-General whenever the public interest, in his judgment, required it. The power reserved in the contract to the Postmaster-General to discontinue the entire service, whenever the public interests in his judgment should require it, was the same, and none other, than the power to annul the contract when his judgment advised it should be done (*Garfielde v. The United States*, 93 U. S., 246); and this being true, the only effect of such annulment would be to discontinue the further performance by claimant of the service described in the contract, and not an abandonment, for future time, of the mail service in the cities mentioned, to be let and performed as in other cases.

In conformity to the views herein expressed, the petition of the claimant should be dismissed, and it is ordered accordingly.

NOTT, *Ch. J.*, dissenting:

1. Mr. Justice Davis, in the case of *Otis* (20 C. Cls. R., 315), laid down as the rule of construction for these mail-messenger contracts of the Post-Office that the "new or additional mail-messenger or transfer service" which is to be performed "without additional compensation" must be construed to mean service similar in nature to that required by the contract. He also held that a contract prepared at the Post-Office leaving the contractor no choice as to form or phraseology must be construed in a doubtful case in favor of justice and against the Government. A more sound and just rule of construction was never laid down by a judge. The case was carried to the Supreme Court and affirmed (120 U. S. R., 115).

I perceive nothing in the present case which justifies me in departing from the decision in the case of Otis, followed as it has been by similar decisions in successive cases.

In previous cases it has been held that there is a difference "in kind" between a "mail station" and a "receiving station." The difference in kind between a street car and a post-office seems to me to be much more radical than the difference between a receiving station and a mail station. The system of carrying the mails on street cars did not exist when the contract was made; the claimant did not agree to meet street cars; he did not agree to meet street cars on time; he did not agree to wait for street cars behind time. The Postmaster-General had no right to try this experiment in city mail transportation at the claimant's cost. As was said in a recent case, "a new system of receiving stations" is not "new or additional transfer or mail station service;" and "extra service" is not new or additional service. For the one, the contractor can recover; the other must be performed without additional compensation. (*Union Transfer Co.'s Case*, 36 C. Cls. R., 216.)

* * * * * * *

14 3. It is well settled that where a contract provides that additional work or service or material may be ordered only by a designated officer, such as the head of a department, a subordinate can not bind the defendants by directing the contractor to do additional work, even though the defendants receive a benefit therefrom. That is to say, if the Secretary of the Treasury intends to erect a building at a cost of $100,000, and stipulates that there shall be no additional work done, except when ordered by himself, the officer under whom the work is done can not make the defendants pay $110,000 for a better building than they contemplated erecting through their Secretary of the Treasury. But it is equally well settled that where service is rendered to the Government, which it needs and is invited by an officer having charge of such work, an implied contract will arise and the claimant will recover *in quantum meruit*. (*Clark v. United States*, 95 U. S. R., 539.)

What are the distinguishing facts in this case? The claimant was a contractor doing mail-messenger service in the city of Boston under a contract which, in effect, required him to do whatever the postmaster migh order and direct. There were complaints that the railroad service by which the Brookline post-office was served was inefficient and unsatisfactory. The postmaster, supposing that Brookline was within the territory of the contractor and that the additional service would be performed without additional compensation, ordered the contractor to do it by wagon service. He complied, but appealed to the Postmaster-General, setting forth that the service was beyond his territory. The Postmater-General called on the postmaster for explanations and investigated the facts; he then approved the service and thereby ratified what had been done, and directed the postmaster to take measures for its unbroken continuance and for permanently carrying it on. When these arrangements had been made he relieved the contractor from performing. The case, therefore, is precisely like that of *Otis* (120 U. S. R., 115, 121, 123) where, under a similar contract, the postmaster in New York required the contractor to carry mails beyond his territorial field, viz., from New York to Jersey City, and where the Supreme Court held that this was extra service for which the contractor was entitled to recover.

15 WESLEY E. TRAVIS *vs.* THE UNITED STATES. } No. 22814.

IV.—*Stipulation of Counsel.*

Whereas the claimant in the above-entitled cause desires to prosecute an appeal from the decision and judgment of the Court of Claims, rendered May 25, 1903, and whereas certain slight modification in the findings of fact in said cause are desirable, in order to prevent the possibility of confusion or misconception in the appellate

court, and whereas it is desired to avoid the delay incident to a motion for amendment of findings in the court below during the summer vacation of the court, it is, therefore, this 29th day of June, 1903, mutually stipulated and agreed by and between counsel for the respective parties as follows, to wit:

1. That the covenants and agreements between claimant and defendant, so far as the questions involved in this case are concerned, are fully set forth in the contract made part of the findings of
16 fact filed herein by the court; that the specifications accompanying the advertisement under which said contract was entered into, contain no provisions, so far as material to the determination of this case, which are not set forth in said contract.

2. That to finding of fact numbered II shall be added the following words and figures, to wit:

"Accompanying this advertisement for proposals were detailed instructions to bidders as to the manner and character of the proposed service and contract, which said instructions to bidders contained the following, to wit:

"There will be no diminution of compensation for partial discontinuance of service or increase of compensation for new, additional, or changed service that may be ordered during the contract term; but the Postmaster-General may discontinue the entire service on any route whenever the public interests, in his judgment, shall require such discontinuance, he allowing, as full indemnity to the contractor, one month's extra pay."

3. That to finding numbered VI there shall be added the words and figures following, to wit:

"The aforesaid decrease was brought about by the determination on the part of the Postmaster-General to dispatch certain mails upon the electric street cars rather than by wagon service, thereby expediting the dispatch of the mails."

4. That to finding VII there shall be added the words and figures following, to wit:

17 "The aforesaid contract was made after public advertisement, as required by law, of which the claimant in this case had full notice and on which he could have bid had he desired to do so. He did not bid upon the same."

It is further stipulated and agreed by and between counsel that the foregoing shall be inserted in the record upon appeal and shall be taken as a part thereof as fully and completely as though the same were actually set forth in the findings of fact in this cause.

A. A. HOELING, JR.,
Attorney for Claimant.

L. A. PRADT,
Assistant Attorney-General.

Let the above stipulation be made a part of the record as desired by counsel.

FRANCIS M. WRIGHT, *Judge.*

Filed July 1, 1903.

J. L.

18 V.—*Judgment of the Court.*

WESLEY E. TRAVIS
v.
UNITED STATES. } No. 22814.

At a Court of Claims held in the city of Washington on the 25th day of May A. D. 1903, judgment was ordered to be entered as follows:

The court on due consideration of the premises finds for the defendant and do- order, adjudge and decree, that the petition of the claimant be dismissed.

BY THE COURT.

19 VI.—*Application for and Allowance of Appeal.*

WESLEY E. TRAVIS
v.
THE UNITED STATES. } No. 22814.

Comes now Wesley E. Travis, the above named claimant, by his attorney, and prays an appeal to the Supreme Court of the United States from the judgment of the court herein, of May 25, 1903, dismissing the petition of the claimant.

A. A. HOELING, JR.,
Attorney for Claimant.

Filed July 1, 1903.

Order.

Let the appeal be allowed.

C. C. NOTT,
Chief Justice.

July 1, 1903.

20 Court of Claims.

WESLEY E. TRAVIS
vs.
UNITED STATES. } No. 22814.

I, John Randolph, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above entitled cause, of the findings of fact and conclusion of law, of the opinion of the court and the dissenting opinion—of the judgment

of the court dismissing the petition—of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 10th day of July, A. D. 1903.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

21 In the Supreme Court of the United States, October Term, 1903.

WESLEY E. TRAVIS, Appellant,
vs.
UNITED STATES. } No. 355.

It is hereby stipulated and agreed, by and between counsel for claimant and defendant, respectively, that there shall be omitted, in printing the record herein, the whole of paragraph 2 in the dissenting opinion of Chief Justice Nott, delivered in the case of Luther Clay Slavens *versus* United States, and which said dissenting opinion forms a part of the record in this case; said dissenting opinion having been modified by said Chief Justice Nott, by striking therefrom said paragraph 2, after the filing of record herein.

A. A. HOEHLING, JR.,
Attorney for Claimant.
GEORGE H. GORMAN,
Attorney for Defendant.

22 [Endorsed:] File No. 19006 Supreme Court U. S. October term, 1903 Term No. 355. Wesley E. Travis app't *vs.* The United States. Stipulation to omit part of record in printing. Filed Aug. 12", 1903.

Endorsed on cover: File No. 19006. Court of Claims. Term No. 355. Wesley E. Travis, appellant, *vs.* The United States. Filed July 10th, 1903.